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Kampelman Challenges Soviets To Act Constructively

Editor's Note: The Honorable Max M. Kampelman is the chairman of the U.S. Delegation to the Madrid Meeting of the Conference on Security and Cooperation in Europe. He is also a member of the Standing Committee on Law and National Security. On July 28 he addressed the Plenary Session of the Conference in Madrid. This address should be of interest to every member of the American Bar Association, and indeed to every American.

We have decided to recess at the close of our proceedings today and to reconvene on October 27, 1981. Many of us began to meet here in Madrid on September 9, 1980. Our inability, in more than ten months of active and tiring deliberations, to complete the tasks assigned to us by the Helsinki Final Act is a regrettable but understandable reflection of the international reality. The same corrosive tensions that formed the background of our meeting in September remain with us today.

The American delegation is not surprised by our inability to conclude our work. The Helsinki Final Act, as we and most delegations here have pointed out during the initial Review of Implementation phase of our meeting, has been grossly violated. It continues to be, in its basic essentials, defiantly challenged by those who choose not to live up to its provisions, in spite of their commitment to do so.

Nevertheless, our delegation and others continue to work and to consider new proposals, with the thought that we might at least agree on words to strengthen the Final Act; and with the hope that these words might in turn later produce the compliance that has been so conspicuously absent.

Eleven days ago, in an effort to move this meeting to a constructive ending, our delegation joined a number of others in a package proposal. During informal meetings with every delegation here, we proposed language to resolve our differences on defining a mandate for a conference on the military aspects of our security. Our basis was the language proposed in the neutral and non-aligned text. Out of respect for the yearnings in this body for a Conference on Confidence and Security Building Measures and Disarmament in Europe, and in response to a real need to deal with the threat of surprise military attack in realistic, significant and verifiable terms, we made our proposal.

This is not an American proposal. It is a Western proposal, with the full support of all Western delegations here. At the Ottawa summit meeting last week, our proposal was characterized by President Reagan, and those other heads of CSCE participating states there, as a major Western initiative. They called on the Soviet Union to accept it and thus bring our meeting to a constructive ending, thereby substantially reducing tension in Europe.

A number of delegates here, not authors with us of the proposal, told us it was a proper response and represented forward movement. We tabled that proposal formally eight days ago in the appropriate forum.

The other objective of our package proposal was to satisfy the concept of balance by a listing of the important categories not yet agreed upon in the areas of human rights, human contacts, and information. The package, we said, and still believe, would provide a balanced document that should be acceptable to all 35 participants.

Our proposal was, furthermore, accompanied by a stated willingness on our part to meet at any time, including over the weekend, to negotiate and define that vital human ingredient for our final document.

Finally, we made it clear in private discussions with many delegations here that, if there were no agreement

Continued on page 2

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Kampelman Challenges Soviets

Continued from page 1

on a military conference, we would be ready to consider the convening of an experts meeting as proposed by some delegations, with the responsibility of making intensive efforts to agree on a mandate for a conference and thus move our process forward.

Regrettably, our package initiative was quickly dismissed as unacceptable. That rejection was obviously the right of those who responded.

Regrettably, our offer to meet over the weekend to negotiate on the human rights and related issues was not taken up. That, too, was the right of those to whom we made the suggestion.

Regrettably, our language, designed to bring us together toward a Conference on Disarmament in Europe, not only was rejected, but was met with the introduction of a completely new proposed formula far from the basis of our previous discussions and obviously unacceptable to most of us here. It led many of us, in all candor, to ask ourselves whether those who proposed it really want a Conference on Disarmament in Europe. Here, too, those who proposed the formula had the right to do so.

And regrettably, our willingness to consider an experts meeting met with a decidedly negative attitude on the part of the other side. That, too, was, of course, their right.

But we also have a right. It is a right to state our own views as clearly as we can; and a right to evaluate this meeting in the light of those rejections.

We will continue to advance our language on the mandate. We believe it represents the most promising road to agreement on a Conference on Disarmament in Europe. We hope that those who rejected it will reconsider their position. But even if they do not, they should know that our position was not put forward as a negotiating position. Our views are firmly held and represent our security interests. They will not change. Our position will be the same in December as it is today, because it is a reasonable and responsible position. It opens the way to the progress that would advance genuine security for all of us. It does not damage the security interests of any other state.

As I have suggested, a major reason why we have not reached agreement here in Madrid is the international atmosphere outside our conference hall. The invasion of Afghanistan and the continued occupation of that tragic country by Soviet troops have had a corrosive effect on our meetings. Recently, as the delegate of the United Kingdom noted on Friday, the European Community presented an imaginative plan for a political settlement of the crisis in Afghanistan. The Soviet Union has not responded to it positively. That, too, has its negative effect here.

Moreover, the Soviet Union is continuing its military buildup, which intensified while my country, in the spirit of "detente," took significant disarmament steps. That buildup, as I noted in this hall several weeks ago, is the most massive that the world has ever known. On behalf of my government I state with deep conviction that it must end. Continued military escalation and activity by the Soviet Union will not attain the security or respect they seek. It may instill fear in some; but it instills determination in many more. Military power, no matter how great, does not confer moral legitimacy.

There has been much debate at our meeting over the word I just used, "detente." The word is meant to describe a condition of relaxation of tension between states. I submit again that the Soviet Union's actions and attitudes toward its neighbors and its massive military buildup demonstrate to us that such a condition does not exist today. If a general pattern of aggression and intimidation can be referred to as "detente," then surely the continued use of the word is bereft of any significance. That is why our delegation has been reluctant to use it in our final document. We will not permit its use as an attempt to camouflage a policy of force.

Within the Soviet Union, the repression of human rights continues with cruel relentlessness. Even if we look only at what has happened since April 10, when the last recess of our meeting began, we see that specific Soviet transgressions of the Final Act have increased in numbers and intensity.

Here in Madrid, we have had some movement in strengthening written commitments to reduce barriers to the reunification of families. But that movement on paper has not been reflected in the practice of Soviet authorities. Emigration figures for Armenians and for ethnic Germans who want to rejoin their families have dropped substantially. The number of Jews allowed to emigrate is dropping at an even greater rate. In the first six months of 1979, 24,794 Jews left the Soviet Union; in the first six months of this year only 6,668 left—a decline of 73 percent in only two years.

For those Jews remaining, conditions have continued to deteriorate. We and other delegations have already noted with deep regret and condemnation the sentencing on June 18 of Viktor Brailovsky. New arrests have taken place. My files are filled with names and letters reflecting individual human tragedy inflicted by an insensitive bureaucracy.

Here in Madrid, we have had difficulty in negotiating a text on religious freedom, in large part because of an insistence on a variety of loopholes which would enable real commitments to be evaded. One of the loopholes is that our commitments are to be qualified by the "national traditions" of participating states. Let us look at what that phrase "national traditions" might mean.

June 27, exactly a month ago, marked the third anniversary of the day two devout Pentecostal families from far Siberia sought refuge in the American Embassy in Moscow. This desperate action by the Vashchenko and Chmykhailov families culminated 20 years of frustrated attempts to emigrate to a country where they could practice their faith freely. There are at least 20,000 Pentecostals who want to emigrate and are denied the right to do so.

Devout Christian believers of all denominations have faced years of persecution, imprisonment, and systematic discrimination in education and employment. Indeed, during previous efforts to emigrate, four of the Vashchenko children were placed by the authorities in a state orphanage and their father was forcibly confined in a psychiatric hospital. During the last three years, at least 250 Christians, to our knowledge, have been imprisoned in the USSR for pursuing the dictates of their faith and conscience. These include Baptists, Adventists, Pentecostals, Russian Orthodox, True Orthodox, Greek Catholics, Roman Catholics, and Jehovah's Witnesses.

We have every reason to wonder whether this pattern of arrests may not be the "national tradition" we are asked to condone. This kind of "national tradition" has no place in any document brought forth by our meeting.

A major objective of many delegations at Madrid, including our own, has been to seek language in our final document that calls for the removal of obstacles preventing the individual from expressing his views and otherwise knowing and acting upon his rights and duties in the human rights area, including those concerning the implementation of the Final Act. The basis for this is in Principle VII of the Final Act. It is, therefore, relevant to examine what has happened to the human rights activists and groups in the Soviet Union, whose purpose is exactly to concern themselves with the implementation of the Helsinki Final Act.

Since early June, three members of the Psychiatric Watch Group, which was set up to monitor the abuse of psychiatric medicine to inflict political punishment, have been sentenced to prison terms.

One of them, Anatoly Koryagin, a psychiatrist, was sentenced on June 5 to seven years in labor camp plus five years of internal exile for "anti-Soviet agitation and propaganda." Koryagin's crime was to attest to the sanity of Aleksei Nikitin, a mining engineer, who was forcibly committed to the Dnepropetrovsk special psychiatric hospital for protesting against unsafe working conditions of miners in the Donetsk region.

In a plenary statement on May 12, I noted the fifth anniversary of the Moscow Helsinki Monitoring Group. Since then, that group, and the Lithuanian and Ukrainian monitoring groups as well, have been further decimated by arrests and trials. This is the occasion to remember that the health of the Moscow group's founder, Yuri Orlov, and of founding member Anatoly Shcharansky, continues to worsen in prison, as does the health of Estonian rights advocate, Mart Niklus, who is serving a 15-year sentence.

Raisa Rudenko, the wife of the founder of the Ukrainian Helsinki monitoring group, Mykola Rudenko, who is himself serving a 12-year sentence, was arrested on May 12 in Kiev. We have only recently learned of the re-arrest on March 24 of Ivan Kandyba, founding member of the Ukrainian group, who now faces the possibility of yet another 15-year sentence, which would bring the total years he will have spent in confinement to 30.

We learned, too, that two new members of the Lithuanian Monitoring Group, Vytautas Vaiciunas and Mecislovas Jurivicius, were arrested and charged with "anti-Soviet fabrications" and participating in religious processions.

And in Latvia on June 9, Juris Bumeisters, a 63-year-old electrical engineer, was sentenced to 15 years of strict regimen camp for treason, reportedly in connection with his involvement in the Latvian Social Democratic Party, which belongs to the Socialist International.

And Andrei Sakharov remains banished to Gorky, weaker in physical strength, isolated by the Soviet authorities—but not forgotten by the world.

I am aware that we have mentioned many names today. I only wish that the list of arrests and persecutions since April 10 were much smaller—indeed, nonexistent. Let me only state that the names mentioned were but a few, illustrative of many more men and women who have become victims of state oppression.

What we have witnessed during the entire life of this Madrid meeting—while the Soviet delegation has been professing its fidelity to the Final Act—is a systematic effort by the regime to destroy the entire human rights movement in the Soviet Union. No human rights group has been left untouched. But these men and women know they have friends. They are not forgotten. We remember them here. Their friends will continue to remember. Books published all over the world will recall their deeds for new generations to remember.

We have on another occasion noted that in Czechoslovakia, human rights champions are facing similar dangers. On July 9, Jiri Gruntorad, a young fighter for human rights and a signer of Charter 77, was sentenced to four years in prison for subversion. Following mass arrests on April 28, trials have begun for members of Charter 77 and VONS (the Committee for the Defense of the Unjustly Persecuted). Just yesterday, the trial of spokesman Rudolph Battek took place. There are reports that other trials are imminent. We deeply hope that the Czechoslovak regime

Continued on page 4

Kampelman Challenges Soviets

Continued from page 3

will reconsider before it does new damage to its standing at this Conference and its relations with the states represented here.

The head of the Soviet delegation has reminded us many times of the small number of human rights activists that exist in his country. Then why is his government so afraid of them? Has it so little confidence in itself that it cannot tolerate the activities of a handful of people? Why is a state that calls for peaceful coexistence unable to coexist with its own internal differing views? Why must it punish people for asking their government to observe the commitments it assumed of its own free will?

I will make a prediction—not a warning, a prediction. The regime can, by force, weaken and even come close to obliterating the formal human rights movement in the Soviet Union. We know from recent history that any totalitarian regime can, if it is ruthless enough, succeed with repression—in the short run. But the struggle for liberty will remain alive. The movement will survive and in time flourish. It will remain alive because new people will emerge to take the place of those who have fallen. It will survive because the whole of history has shown that no method of police brutality has yet been devised to crush the human spirit.

Let me now state that we do not here seek, nor do we have a right to seek under the Helsinki Final Act, to interfere with the political, social, economic and cultural system of any other participating state. We do not do so. But we have every right to insist that participating states conform to the provisions of the Act. What state here maintains that human brutality and repression are an integral part of its system? What state here maintains that to abide by the terms of the Helsinki Final Act is incompatible with its system? To insist that respect for human rights and fundamental freedoms be maintained is our right under the Act. Indeed, it is our duty, if we are to take the Helsinki Final Act seriously.

I speak for the American people when I say we want the peoples governed by the Soviet Union to become the great contributors to civilization that they aspire to be. We look to the day when their government can unlock the genius of its peoples, great peoples with profound cultures and proud histories. We pray that the government will gain the self-confidence and the moral courage to advance human rights rather than suppress them, because that is the key to the genius and greatness of any people.

The transgressions of the Final Act here cited, all of them applying to the short period since our last recess, are raised to underscore a point essential to the success of the Madrid meeting. Events outside our conference cloud the possibility of significant achievements here. Their improvement will be reflected in an improved spirit here.

The United States delegation will return in October with determination to fulfill its responsibilities under the Helsinki Final Act. We join nearly all of the delegations here in our determination to bring this meeting to a close with positive, substantial, and balanced results. What we need to accomplish this objective is a reciprocal commitment. We need a demonstration that the Soviet Union intends to abide by the provisions of the Final Act. Our peoples have every right to ask what good it does to talk about new promises when the old ones are not kept.

The delegation of the United States will persevere in its efforts here for peace, security, and understanding, and for the building of the CSCE process. What we have already done in a long ten months in Madrid is inadequate, but it can provide a good basis on which we can build.

It is our view that the best way to build is—

—by finding language which makes unmistakable reference to the important role that Helsinki monitors can play;

—by agreeing to discuss our problems in the human rights and human contacts areas in a serious, thoughtful and constructive spirit at post-Madrid experts meetings;

—by putting specific content into the Final Act language on freedom of religion;

—by reaching consensus on a strong information text. It is the unique gift of thought which distinguishes man from the animal world. The right to hear facts and ideas through, among other things, the unimpeded dissemination of broadcast information is an integral part of that thought process; as is clear protection for professional journalists, a vital channel through which facts and ideas are communicated;

—and by agreeing on a final document which sets an early date for the next follow-up meeting. In the very first days of the Madrid meeting last September, I urged that the best way to show commitment to the Helsinki process was to agree at the very outset that we would have another follow-up meeting at a reasonable time following the close of this one. For more than ten months, the Soviet Union has refused to join us in this commitment.

These objectives can be met in the eight weeks that remain to us. Indeed, they could have been met in these last few weeks if our offer to negotiate on the issues I have just listed had been accepted.

As we look ahead to our reconvened session, it is important to take care that the length of this meeting does not distort its original and intended balance. This would not be healthy for the Helsinki process. We must not turn the CSCE into a military forum, or our

meeting into a preparatory one for a military conference. Thus, when we return, our delegation intends to assure an equitable balance by continuing to press for our human rights proposals; and we will continue to refer to implementation issues as events require. We cannot treat this meeting as if it were an ivory tower, above the clouds which darken the world.

Finally, let us face the fact that the next session is in all likelihood our last chance for a substantial concluding document. We note here the realism of the Swiss delegate last Friday. To proceed beyond December without agreement may well risk scorn for the CSCE process. It is too early to contemplate such a disappointing result. But we have less time than we think. Facing reality early may help us to mobilize ourselves for the more positive results we seek.

No delegation represented here will negotiate more seriously in the eight weeks left to us than the United States delegation. We Americans return home today determined to continue to do our part to make the full contribution that the CSCE process and the aims of security and cooperation require of all of us. I know that in this we are joined by many. We pray that we will be joined by all.

House Acts on Intelligence Identities Protection Bill

The House of Representatives debated and passed H.R. 4, the Intelligence Identities Protection Act (amending the National Security Act of 1947) as amended on the floor during debate on September 23. The vote was 354 to 56. But some strange things happened on the way to passage.

The major point of controversy between H.R. 4 and its companion bill in the Senate, S.391, lies in Sec. 601(c). This section (different from Secs. 601(a) and (b), where authorized access to classified information on identities of covert agents is an element of the crime), would provide criminal penalties for any person (including those who have never had authorized access to classified matter), who discloses the identity of covert agents with the intent to impair or impede U. S. foreign intelligence activities. The elements of the crime in Sec. 601(c) were carefully crafted in both S.391 and H.R. 4 in order to meet constitutional tests.

The major differences with regard to Sec. 601(c) were that H.R. 4 (as reported from committee) utilized an "intent" standard for prosecution, whereas S.391 employs a "reason to believe" standard. Further, S.391 requires that the exposure of identities be "in the course of a pattern of activities" by the defendant.

Most of the knowledgeable witnesses who testified before the House Permanent Select Committee on Intelligence urged passage of H.R. 4 (in its reported state) if for no other reason than to bring the bill to the floor. However, the Department of Justice expressed a preference for S.391, because the intent standard under H.R. 4 would make prosecution very difficult from an evidentiary standpoint. Director of Central Intelligence Casey also wrote Committee Chairman Boland on July 15 to emphasize the administration's preference for S.391. Further support was noted in President Reagan's letter of September 14 to Senator East urging reporting out S.391 without amendment. The president noted that any change in S.391 "would have the effect of altering this carefully-crafted balance. I cannot overemphasize the importance of this legislation."

However, when the House Intelligence Committee reported out H.R. 4 on September 10 (H. Rpt. No. 97-221), another problem had been inserted in Sec. 601(c) by the addition of the phrase "by the fact of such identification or exposure" to the essential elements of the crime. While the intent standard was still present, the new phrase inserted after the element "to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States," would require the prosecution also to prove that the disclosure of the identity of a covert agent actually did impair or impede our foreign intelligence activities. The security implications of trial proof and discovery under this element are appalling.

The Association of Former Intelligence Officers (AFIO), through its legal advisor, John S. Warner, immediately labelled this new development for what it felt it was—a "results test," and it sent a strong letter of concern to House Intelligence Committee Chairman Boland (D-Mass.). AFIO also pointed out other matters of concern in the committee report. In a reply dated September 16, the chairman asked that AFIO representatives meet with his staff to help resolve the differences and denying any committee intent to consider the added words a "results test."

On September 21, Jack Maury, President of AFIO, John Warner, and Walter Pforzheimer of the AFIO Executive Committee, met with Michael O'Neil, the committee chief counsel, and a member of his staff. While the committee staff continued to deny that the new wording in Sec. 601(c) constituted a "results test" or any desire to create such an element, it was agreed that this could best be resolved for the legislative history of H.R. 4 by a colloquy during the floor debate. Such a colloquy took place between Subcommittee Chairman Mazzoli (D.-Ky.) and Rep. McClory (R.-Ill.), in which the former concluded:

> In sum, Sec. 601(c) is only concerned with what a person intends in making a disclosure, not in what may or may not have been the result of his having done so.

Continued on back page

Intelligence Identities Bill

Continued from page 5

In reporting H.R. 4, the overwhelming majority of House Intelligence Committee members voted in support of the bill as reported. They were very anxious to bring "Identities" legislation to the floor; and they wished to avoid a second sequential referral of H.R. 4 to the Judiciary Committee, with its attendant delays. The language of H.R. 4 was satisfactory to the Judiciary Committee. Only Rep. John Ashbrook (R.-Ohio) took a dissenting position in the committee report, noting a strong preference for the language of S.391 in Sec. 601(c).

During the lengthy floor debate on H.R. 4, Mr. Ashbrook offered his amendment to substitute the Sec. 601(c) language from S.391 for that in H.R. 4. The debate was lengthy, as virtually all the members of the Intelligence Committee except Mr. Young (R.-Fla.) and Mr. Stump (D.-Ariz.) (on the vote) opposed the Ashbrook amendment. On the vote, to the amazement of many, the Ashbrook amendment won by a vote of 226-181. On the vote, there was almost an even split among those holding congressional leadership positions on both sides of the aisles. For instance, the Majority Leader (James Wright, D.-Tex.) and the Minority Whip (Trent Lott, R.-Miss.) both voted for the Ashbrook amendment.

Rep. Gerald Solomon (R.-N.Y.) then proposed an amendment to the term "covert agent" as defined in H.R. 4. This amendment would extend the coverage of H.R. 4 to include former (as well as present) officers or employees of an intelligence agency, or those past or present who were in a classified intelligence relationship. This amendment was carried overwhelmingly, 313-94.

H.R. 4 passed the House on final vote, 354-56. This legislation now awaits final Senate action, where S.391 is scheduled for Senate Judiciary Committee consideration on October 6.

Walter Pforzheimer

Editor's Note: Passage of the Intelligence Identities Protection Act appears to be a top priority of the CIA, and little wonder, because the very lives of its covert agents are at stake. The exposure activities of people like Philip Agee have enraged the nation and have found no sympathy in the courts. How to make such activities a crime without trampling on the constitutional rights of others is the subject of the debate in the House of Representatives, as reported by Walter Pforzheimer, who sat in the House gallery throughout the entire proceedings.

Mr. Pforzheimer's report of what happened on the floor of the House is accurate, but legal scholars and teachers of constitutional law will want for full flavor to read the entire debate as reported in the Congressional Record *for September 23, at pages H 6504 through H 6540. It had more changes in direction than a mountain switchback road. The exchanges between congressmen were hot and heavy, covered, of course, with the patina of congressional politesse, to wit, "I rise with the greatest respect for my friend from . . . but having said that I must regretfully oppose his amendment because it's patently unconstitutional."*

"Unconstitutional," that was the word of the day. House Intelligence Committee members, less Mr. Ashbrook, supported the reported version of H.R. 4, because it seemed to them to be more "constitutional" than the Ashbrook version. Some members condemned both versions as unconstitutional. Indeed, one passionate opponent of the bill as it finally passed (Mr. Weiss of New York) cried out, "Mr. Chairman, after witnessing the happenings of this day, one might think with some justification that if an amendment were offered to strike the first amendment to the Constitution that it would probably carry!

But Mr. Weiss was out of tune with the overwhelming sentiment and mood of his colleagues as the final vote (354 to 56) demonstrates. We shall now have to wait and see what happens in the Senate Judiciary Committee, on the floor of the Senate, in the House-Senate conference on the bills, and finally, probably years hence, in the courts. Only then will we find out who was right, the 354 or the 56.

* * * *

Addendum: On October 6, the Senate Judiciary Committee, by a vote of 9 to 8, decided to narrow the scope of the Intelligence Identities Protection Act (S.391) by adding the requirement that the act of disclosing the identities of covert agents be accompanied by a specific intent to impair or impede the foreign intelligence activities of the United States. The amendment, which was offered by Senators Biden, Leahy and Kennedy, had the support of all the Democratic members of the committee and two Republicans, Specter of Pennsylvania and Mathias of Maryland.

Thus, while the companion bill in the House was amended on the floor in a manner which brought it close to the original text of S.391, the Senate Judiciary Committee has amended S.391 in a manner which approximates the original language of H.R. 4. The bill now goes to the Senate floor, where there will no doubt be an effort to restore S.391 to its original text, after which it will go to conference to resolve any substantive differences between the House and Senate versions.

An excellent analysis of S.391/H.R. 4 was made by Samuel T. Francis for the Heritage Foundation. It appears in a Heritage Issue Bulletin for October 1. Dr. Francis is legislative assistant for national security to Senator John P. East of North Carolina. Copies may be had by writing the Heritage Foundation, 513 C Street N.E., Washington, D. C. 20002.